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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,298	07/09/2003	Alfons Sieverding	302220	1297

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/604,298	<b>Applicant(s)</b> SIEVERDING, ALFONS	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10, 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,091,360 to Edwards in view of U.S. Patent No. 3,353,707 to Eyles and United Kingdom Patent GB 859,964 to Pharce-Smith.

Regarding Claims 1 and 12-14, Edwards teaches a stackable deep-drawn plastic container in the form of a plant pot container comprising: an at least slightly conical wall (Edwards #12 and Col. 2 line 40-41) and a bottom (Edwards Fig. 7 #120) connected to the conical wall, wherein the conical wall has a rim area (Edwards #118) remote from the bottom;

Edwards teaches a first ledge (Edwards Fig. 12 #232) and a second ledge (Edwards Fig. 12 #234), located below the first ledge, comprises an intermediate support area (Edwards Fig. 10 #136) having a first end connected to the first ledge and having a second end connected to the second ledge, wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges (Edwards Fig. 12), wherein the first and second ledges in a plan view, at least partially overlap, wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge (Edwards Fig. 12 #232

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smaller than #234) and the intermediate support area having a wave shape (Edwards Fig. 7 and 9 #130, 136, 124) at least at one of the first and second ends which softens a cross-sectional stiffness of the rim area for improved removal from the mold (Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. In re Mraz, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together. Jockmus v. Leviton, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the claimed invention as can drawings in utility patents. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. In re Aslanian, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). See MPEP § 2121.04 for more information on prior art drawings as enabled disclosures); wherein the second ledge has a contour matching the wave shape of the intermediate support area (Edwards Fig. 7, 9 and 12 #130) and overlaps in a plan view radially at least most of the radial width of the first ledge (Edwards Fig. 12); wherein the second ledge continuously extends uninterrupted over an entire periphery of the plant pot (Edwards Fig. 7 and Fig. 11 #134) wherein the wave shape is sized and shaped to permit deformation (Edwards Col. 4 line 66) of at least the second ledge during removal from a deep drawing mold; wave shape softens the cross-sectional stiffness but does not soften a longitudinal stiffness.

Edwards is silent on the rim area containing the first and second ledges and the intermediate support area and that the first ledge forms an upper flange rim of the rim area for nesting/stacking; and wherein the upper flange rim has a wall thickness that is greater than a wall thickness of the remaining parts of the plastic container.

However, Eyles teaches that first ledge, second ledge, and intermediate area for stacking containers is located at the rim area (Eyles Fig. 6 #32, 31, 17). It would have been obvious to one of ordinary skill in the art to modify the teachings of Edwards with the teachings of Eyles at the time of the invention since the modification is merely the shifting location of known elements performing the same intended function to prevent vertical displacement as taught by Eyles (Eyles Col. 2 line 26-28).

Edwards as modified by Eyles is silent on the upper flange has a greater wall thickness. However, Pharce-Smith teaches a plant pot rim with a greater thickness than the container thickness (Pharce-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Edwards with the teachings of Pharce-Smith at the time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container and to provide a larger surface area for gripping the container at the rim.

Regarding Claim 2, Edwards as modified teaches the wave shape of the intermediate support area is a rectangular wave shape (Edwards Fig. 7 and 9).

Regarding Claim 3, Edwards as modified teaches the wave shape forms divisions in the circumferential direction, which are not significantly greater than dimensions of the intermediate support area (Edwards Fig. 7, 9, 6, and 8 #136, 138).

Regarding Claim 4, Edwards as modified teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Edwards Fig. 7 and Fig. 12 area between #232 and 234).

Regarding Claim 5, Edwards as modified teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Edwards Fig. 6 and 7).

Regarding Claim 6, Edwards as modified teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Edwards Fig. 12, and 10).

Regarding Claim 10, Edwards as modified teaches the upper flange rim has an outer downwardly bent edge (Edwards #118).

Regarding Claim 15, Edwards as modified teaches the intermediate support area has a reverse taper (Edwards Fig. 7 #136).

Regarding Claim 16, Edwards as modified teaches the wave shape is wedge shaped in the vertical direction so that the first ledge has a contour uninterrupted by the wave shape of the intermediate support area (Edwards Fig. 7 #132).

Regarding Claim 17, Edwards as modified teaches an inner edge of the first ledge has a width smaller than a width of an inner edge of a second ledge (Edwards Fig. 2 #232 and 234 and Fig. 7).

### ***Response to Arguments***

Applicant's arguments filed 14 September 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Edwards is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Edwards teaches a cup/container/receptacle which is in the same field of applicant's endeavor. For example, U.S. Patent No. 3,973,316 to Maher teaches that it is old and notoriously well-known to plant a plant in a cup. Thus, Edwards does in fact teach a plant pot and is capable of receiving a plant planted therein. Furthermore, Edwards is reasonably pertinent to the particular problem at hand, which is to provide a stackable plastic container that can receive plants. Applicant has not claimed the size of plant that is intended to be planted in the container. It is notoriously well-known in the art of endeavor to plant small seedlings or to germinate seeds in small plastic containers that do not necessarily require that the container have heavy duty walls. Applicant argues that Edwards has thin and weak walls, but applicant has not claimed heavy duty walls.



Examiner maintains that Edwards teaches the wave shaped as defined by the present invention. In response to applicant's argument that Edwards does not perform the function of "soften a cross-sectional stiffness of the rim area for improved removal from a deep drawn mold", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The cups of Edwards, especially the stacked cups, are resiliently designed (Edwards Col. 1 line 59-68) and thus have a softened cross sectional stiffness. Applicant has not quantified or clearly defined "soften". Since Edwards teaches a plastic it could be interpreted that it is a soften cross section relative to a container fabricated out of stainless steel or clay/ceramic. Applicant mentions that element #30 can provide a degree of rigidity (Edwards Col. 3 line 58) to the cup, not to the "cross-sectional stiffness". It is the wave pattern that provides the softened cross-sectional stiffness and since Edwards teaches this wave pattern, Edwards is capable of functioning as softening the cross-sectional stiffness.

Examiner suggests that applicant better define the limitations of claim 17.

Examiner maintains that applicant has currently not patentably distinguished over the teachings of the cited prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 3,973,316.



**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

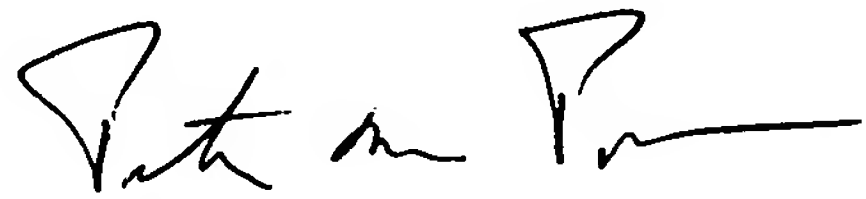
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

15 November 2005

  
Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

11/16/05